REPORT TO CITY COUNCIL

DATE: **OCTOBER 10, 2018**

TO: **HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

FROM: **GREG RAMIREZ, CITY MANAGER**

BY: **NATHAN HAMBURGER, ASSISTANT CITY MANAGER** nh

SUBJECT: **ADOPTION OF ORDINANCE NO. 18-438, AMENDING THE INCLUSIONARY HOUSING ORDINANCE, SECTION 9133 (INCLUSIONARY HOUSING) OF PART 4 (GENERAL DEVELOPMENT STANDARDS) OF CHAPTER 1 (INTRODUCTION) OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. ZOA-01250-2016) (CITY OF AGOURA HILLS, APPLICANT)**

At the City Council meeting of September 26, 2018, on a 5-0 vote, the City Council introduced, read by title only, and waived further reading of Ordinance No. 18-438 amending the inclusionary housing ordinance (Municipal Code Section 9133).

The Ordinance updates the regulations pertaining to inclusionary housing requirements to reflect current Agoura Hills General Plan Housing Element goals and policies and state laws. The Ordinance also provides clarifications and administrative text revisions, including streamlining of the definition section, and other miscellaneous provisions. Included in the Ordinance are revisions to the allowed alternatives to building inclusionary housing on-site, which also contains the "combination alternative," as directed by the City Council.

Due to a clerical error, the version of the ordinance reviewed by the City Council on September 26, 2018, had unintentionally omitted an existing provision in the Municipal Code regarding the rounding up of fractional units above .50 units. Attached is a corrected version of Ordinance No. 18-438, which now includes the following Section 9133.4.C that reads as follows:

> "In calculating the required number of inclusionary units in Section 9133.4.A.1, Section 9133.4.A.2, and Section 9133.4.A.3, fractional units of .50 or above shall be rounded up to a whole unit."

RECOMMENDATION

Staff respectfully recommends the City Council adopt Ordinance No. 18-438.

Attachment: Ordinance No. 18-438

ORDINANCE NO. 18-438

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING THE INCLUSIONARY HOUSING ORDINANCE, SECTION 9133 (INCLUSIONARY HOUSING) OF PART 4 (GENERAL DEVELOPMENT STANDARDS) OF CHAPTER 1 (INTRODUCTION) OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Recitals.

(i) On July 9, 2008, the City Council adopted Ordinance No. 08-353 revising regulations applicable to the provision of inclusionary housing, and amending Section 9133 (Inclusionary Housing) of Part 4 (General Development Standards) of Chapter 1 (Introduction) of Article IX (Zoning) of the Agoura Hills Municipal Code (AHMC).

(ii) The purpose of this Ordinance is to further amend Sections 9133 *et seq.* of the AHMC to update certain regulations pertaining to: (1) the provision of inclusionary housing units in certain residential and mixed-use developments; (2) alternatives to developing inclusionary units on-site in residential developments; and (3) minor clarifications and text revisions, including the removal of references to and provisions related to the former City of Agoura Hills Redevelopment Agency.

(iii) On May 3, 2018, the Planning Commission conducted and concluded a duly noticed public hearing concerning this Ordinance as required by law at which the Planning Commission received testimony from City staff and all interested parties regarding the proposed amendments. Following the close of the public hearing, the Planning Commission adopted Resolution No. 18-1214, recommending approval of the draft Ordinance.

(iv) On September 26, 2018, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the Ordinance as required by law.

(v) At the public hearing on September 26, 2018, the City Council received testimony from City staff and all interested parties regarding the proposed amendments.

(vi) All legal prerequisites to the adoption of the Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Agoura Hills hereby ordains as follows:

Section 1. The facts set forth in the Recitals of this Ordinance are true and correct.

Section 2. Pursuant to the California Environmental Quality Act ("CEQA"), and the City's local CEQA Guidelines, City staff has determined that this Ordinance (the "project") is covered by the general rule that CEQA applies only to projects that have the potential to cause a significant effect on the environment. City staff found that there is no possible significant effect related to the project since the Ordinance proposes to update certain regulations pertaining to the provision of inclusionary housing units in residential and mixed-use developments, alternatives to developing inclusionary units on-site, including updating in-lieu fees, and making minor clarifications and text revisions, including the removal of references and provisions relating to the former City of Agoura Hills Redevelopment Agency. The administrative changes included in the Ordinance will not contribute to any physical changes to the environment; therefore, the project would not result in significant impacts to the environment. No further action is required under CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 CCR § 15061(b)(3)). The City Council has reviewed the project, and based upon the whole record before it, in the exercise of its independent judgment and analysis, finds that City staff has correctly concluded that it can be seen with certainty that there is no possibility the proposed Ordinance may have a significant effect on the environment.

Section 3. Section 9133 (Inclusionary Housing) of Part 4 (General Development Standards) of Chapter 1 (Introduction) of Article IX (Zoning) of the Agoura Hills Municipal Code is hereby amended in its entirety to read as follows:

"9133. Inclusionary Housing.

9133.1. Purpose.

The provisions of this section establish standards and procedures that encourage the development of housing that is affordable to a range of households with varying income levels. The purpose of this section is to encourage the development and availability of affordable housing by ensuring that the addition of affordable housing units is in proportion with the overall increase in new housing units and to provide standards and procedures for the administration of the city's inclusionary housing program.

9133.2. Definitions.

As used in this section, the following terms shall have the following meanings:

Adjusted for household size appropriate for the unit means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

Affordable housing cost means the total housing costs paid by a qualifying household, which shall not exceed a specified fraction of its gross income, adjusted for household size appropriate for the unit, as follows:

A. Very low-income households, rental or for-sale units: thirty (30) percent of fifty (50) percent of the Los Angeles County median income.

B. Low Income households, rental units: thirty (30) percent of sixty (60) percent of the Los Angeles County median income.

C. Low-income households, for-sale units: thirty (30) percent of seventy (70) percent of the Los Angeles County median income.

D. Moderate-income households, rental units: thirty (30) percent of one hundred ten (110) percent of the Los Angeles County median income.

E. Moderate-income households, for sale units: thirty-five (35) percent of one hundred and ten (110) percent of the Los Angeles County median income.

Developer means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a residential development.

Development agreement means an agreement entered into between the city and a developer pursuant to California Government Code sections 65864 *et seq.* and Agoura Hills Municipal Code sections 9681 *et seq.*

Director means the city's director of planning.

Dwelling unit means one (1) or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household.

HCD means the California Department of Housing and Community Development.

HUD means the United States Department of Housing and Urban Development.

Inclusionary housing agreement means a legally binding agreement between a developer and the city, in form and substance satisfactory to the director and city attorney, setting forth those provisions necessary to ensure that the requirements of this section are satisfied.

Inclusionary housing plan means the plan referenced in subsection 9133.6 and further described in the guidelines, which sets forth the manner in which the requirements of this section will be implemented for a particular residential development.

Inclusionary housing trust fund shall have the meaning set forth in subsection 9133.10.

Inclusionary unit means a dwelling unit that will be offered for occupancy by very-low, low-, and moderate-income households, at an affordable housing cost, pursuant to this section.

In-lieu fee means a fee paid to the city by a developer instead of providing the required inclusionary units within the residential development.

Low-income households means households whose gross income is greater than fifty (50) percent and does not exceed eighty (80) percent of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

Market rate units mean those dwelling units in a residential development that are not inclusionary units.

Moderate-income households means households whose gross income is greater than eighty (80) percent and does not exceed one hundred and twenty (120) percent of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

Residential development means the construction, development, or subdivision of property, including condominium conversions, resulting in ten (10) or more lots or dwelling units, including dwelling units in mixed-use projects.

Very-low-income households means households whose gross income is equal to fifty (50) percent or less of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

9133.3. Applicability.

A. This section shall apply to all residential developments, as defined herein, where the lots or units will be offered for sale or for rent.

B. Notwithstanding subsection A, inclusionary units shall not be required for any project for which the city enters into a development agreement or for any project that is otherwise exempt under State law.

9133.4. Inclusionary unit requirements.

A. Inclusionary units shall be reserved for very low-, low- and moderate- income households, and offered at an affordable housing cost, as follows:

1. For all newly constructed rental units in a residential or mixed-use development, a minimum seven percent (7%) of all the units in the development shall be rented to and occupied by very low-income households; a minimum four percent (4%) of all the units in the development shall be rented to and occupied by low-income households; and a minimum four percent (4%) of all the units in the development shall be rented to and occupied by moderate income households.

2. For all condominium conversion projects and newly constructed condominiums in a residential or mixed-use development, a minimum seven percent (7%) of all the units in the development shall be sold to and occupied by very low-income households; a minimum four percent (4%) of all the units in the development shall be sold to and occupied by low-income households; and a minimum four percent (4%) of all the units in the development shall be sold to and occupied by moderate income households.

3. For all single-family subdivisions, a minimum seven percent (7%) of all the units in the development shall be sold to and occupied by very low-income households; a minimum four percent (4%) of all the units in the development shall be sold to and occupied by low-income households; and a minimum four percent (4%) of all the units in the development shall be sold to and occupied by moderate income households.

B. The city shall set on an annual basis, or as otherwise needed, the maximum allowable rents and sales prices for inclusionary units, adjusted for family size.

C. In calculating the required number of inclusionary units in Section 9133.4.A.1., Section 9133.4.A.2, and Section 9133.4.A.3, fractional units of .50 or above shall be rounded up to a whole unit.

9133.5. Alternative.

Developing all of the required inclusionary units within the residential development, as required under Section 9133.4, is preferred. However, as an alternative, the requirements of Section 9133.4 may be satisfied as follows:

A. The developer may propose to satisfy the inclusionary housing unit requirements of Section 9133.4.A.1, 9133.4.A.2, and 9133.4.A.3 through payment of an in-lieu fee. The amount of the in-lieu fee shall be calculated using the fee schedule established by resolution of the city council.

B. In accordance with this paragraph, the developer may propose to satisfy the inclusionary housing unit requirements of Section 9133.4.A.1, 9133.4.A.2, and 9133.4.A.3 by providing some of the required inclusionary units on-site and paying an in-lieu fee for any required inclusionary units that are not included in the project. The developer may build the required very low income inclusionary units on-site, and pay the applicable in-lieu fee for the required low income and moderate income units that are not built within the development. The developer may build the required low income inclusionary units on-site, and pay the applicable in-lieu fee for the required very low income and moderate income units that are not built within the development. The developer may build both the required very low income and low income inclusionary units on-site, and pay the in-lieu fee for the required moderate income units that are not built within the development. In no case may the developer build the moderate income units on-site and pay the in-lieu fee for the required very low and low income inclusionary units. The amount of the in-lieu shall be calculated by using the fee schedule established by resolution of the city council.

C. One-half of the in-lieu fee required under Section 9133.5.A or 9133.5.B shall be paid (or an irrevocable letter of credit posted) prior to issuance of a building permit for all or any part of the residential development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the residential development. All fees collected shall be deposited in the inclusionary housing trust fund.

9133.6. Housing plan.

Along with an application for a residential development, a developer shall submit a housing plan to the Director setting forth in detail the manner in which the provisions of this section 9133 will be implemented for the proposed residential development. No application shall be deemed complete until the developer has submitted a complete housing plan.

9133.7. Inclusionary housing agreement.

For residential developments providing inclusionary units on-site, an inclusionary housing agreement is required. Such agreement, which shall include provisions and terms for meeting the requirements of this section, shall be approved by the city manager, and recorded as a deed restriction against the property prior to issuance of either a grading or building permit, whichever comes first.

9133.8. Standards for inclusionary units.

A. All inclusionary units shall be:

1. Reasonably dispersed throughout the residential development.
2. Proportional, in number, bedroom size and location, to the market rate units.
3. Comparable with the market rate units in terms of the base design, appearance, materials and finished quality.

B. All inclusionary units in a residential development shall be made available for occupancy concurrently with or prior to the occupancy of the market rate units. In the event the city approves a phased project, the inclusionary units required by this section shall be provided proportionally within each phase of the residential development.

C. Inclusionary units shall remain restricted for owner-occupancy by the target income category at the applicable affordable housing cost for a period of not less than forty-five (45) years. At the request of the owner-occupants who initially occupy the inclusionary unit and subsequently seek to sell the inclusionary unit, the City may impose the equity sharing agreement rules included in California Density Bonus Law, currently codified as Government Code Section 65915(c)(2), instead of requiring the aforementioned restriction for 45 years.

D. Inclusionary units in rental residential developments shall remain restricted for occupancy by the target income category at the applicable affordable housing cost for a period of not less than fifty-five (55) years.

E. The occupancy of the inclusionary units shall be governed by the terms of the inclusionary housing agreement recorded as a deed restriction against the property.

9133.9. Implementation and enforcement.

A. The City Council may adopt administrative guidelines to assist in implementing and administering this section.

B. Any violation of this section constitutes a misdemeanor.

C. The provisions of this section shall apply to all owners, developers, their agents, successors, and assigns that propose a residential development, occupy an inclusionary unit, or both. All inclusionary units shall be sold or rented in accordance with this section and any regulations and administrative guidelines adopted pursuant to this section.

D. Any individual who sells or rents an inclusionary unit in violation of the provisions of this section, the guidelines, or the inclusionary housing agreement shall be required to forfeit to the city all monetary amounts obtained in violation of those provisions. Recovered funds shall be deposited into the inclusionary housing trust fund.

E. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance with this section, including but not limited to: (1) actions to revoke, deny, or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and (2) actions for injunctive relief or damages.

F. In any action to enforce this section or an inclusionary housing agreement recorded hereunder, the city shall be entitled to recover its reasonable attorney's fees and costs.

9133.10. Inclusionary housing trust fund.

A. There is an established separate fund of the city, known as the inclusionary housing trust fund. All monies collected by the city pursuant to this section shall be deposited in the inclusionary housing trust fund.

B. The monies in the fund and all earnings from investment of the monies in the fund shall be expended to provide housing affordable to very low-income, low-income, and moderate-income households in the city. Such expenditures may include, but shall not be limited to, the costs of administration, monitoring, and compliance for the city's affordable housing program, as further explained in subsection C.

C. For the purpose of this section, providing housing affordable to very low-, low-, and moderate-income households may include, but is not limited to, expending funds for the following: development of affordable units; acquisition of property for the development of such units; subsidies for the construction of such units; maintenance of affordable housing; partnering with affordable housing developers; conversion of existing market rate units to very low-, low- and moderate-income for-sale or rental units; subsidies for covenants to create or preserve very low-, low-, and moderate-income units; substantial rehabilitation of very low-, low-, and moderate-income units; and costs to administer the inclusionary housing trust fund and inclusionary housing program.

9133.11. Administrative fees.

The city council may by resolution establish reasonable fees and deposits for the administration of this chapter."

Section 4. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 5. The City Clerk shall certify the adoption of this Ordinance and cause its publication in accordance with applicable law.

PASSED, APPROVED, AND ADOPTED this 10th day of October, 2018, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

_____
William D. Koehler, Mayor

ATTEST:

_____
Kimberly M. Rodrigues, City Clerk, MMC

APPROVED AS TO FORM:

_____
Candice K. Lee, City Attorney